

EDWARD WALLACE JEFFERSON and	:	Order Docketing and Dismissing
TINA CAMPBELL JEFFERSON,	:	Appeal
Appellants	:	
	:	
v.	:	
	:	Docket No. IBIA 96-18-A
ACTING MINNEAPOLIS AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	November 29, 1995

On November 27, 1995, the Board of Indian Appeals (Board) received a notice of appeal from Edward Wallace Jefferson and Tina Campbell Jefferson (appellants). Appellants sought review of an October 16, 1995, decision issued by the Acting Minneapolis Area Director, Bureau of Indian Affairs (Area Director), denying their application to have fee land which they owned taken into trust status. The decision stated:

Our decision may be appealed to the Interior Board of Indian Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203, in accordance with the regulations in 43 C.F.R. § 4.310-4.340. Your notice of appeal to the Board must be signed by you or your attorney and must be mailed within 30 days of the date you receive this decision. \* \* \* You must send copies of your notice of appeal to (1) Assistant Secretary - Indian Affairs \* \* \*, (2) each interested party known to you, and (3) this office. \* \* \*

If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal. [Emphasis in original.]

The November 24, 1995, letter transmitting the notice of appeal to the Board states in relevant part:

I enclose a signed original Appeal in this matter which has previously been mailed to the original addressees as noted on November 13, 1995. I have also enclosed a photocopy of the signature page sent to other parties.

The Jeffersons ask that the Appeal be considered filed as of the date that the appeal was filed with the Minneapolis Area Office and the Assistant Secretary for Indian Affairs and other interested parties.

The enclosed November 13, 1995, notice of appeal is addressed to the Area Director, the Assistant Secretary, and appellants' minor children. The notice shows additional distribution to appellants, the General Counsel for the Prairie Island Mdewakanton Sioux Community, the Community's Tribal Council, an attorney, and the Minneapolis Area Realty Officer. The Board is not listed anywhere on the notice of appeal.

The return receipt card for appellants' copy of the October 16, 1995, decision, which was provided to the Board by the Area Office, shows Tina's signature and October 23, 1995, as the date of receipt. The notice of appeal sent to the Board is postmarked November 24, 1995, which is more than 30 days from the date appellants received the decision. Appellants, by asking that the date of service of the notice on interested parties be considered the date of filing with the Board, essentially admit that the notice of appeal to the Board is untimely.

The relevant date for determining whether a notice of appeal is timely filed is the date of mailing to the Board. The Area Director's decision clearly informed appellants that their notice of appeal was to be filed with the Board and provided the Board's correct address. Appellants did not follow the Area Director's instructions but, instead, mailed their November 13, 1995, notice of appeal to the Assistant Secretary and the Area Director, and failed to send the notice to the Board. Their November 24, 1995, letter to the Board was mailed more than 30 days after their receipt of the decision. Appellants have failed to file a timely notice of appeal.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Acting Minneapolis Area Director's October 16, 1995 is docketed and dismissed as being untimely filed.

---

Kathryn A. Lynn  
Chief Administrative Judge

---

Anita Vogt  
Administrative Judge